

AGENDA

State of Wisconsin
Livestock Facility Siting Review Board
Teleconference Meeting

June 3, 2008
DATCP, Room 231
2811 Agriculture Drive, Madison

- 12:00 p.m. CALL TO ORDER—Jim Holte, LFSRB Chair
- Open meeting notice
 - Approval of agenda
 - Approval of May 16, 2008, meeting minutes
- 12:10 p. m *Ronald S. Stadler v. Crawford County, Docket No. 08-L-01*
- Approve draft decision
- 12:50 p.m. Board schedule and future agenda items
- Next meeting June 20, 2008
 - Future agenda items
- 1:00 p.m. ADJOURN

**DRAFT MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD
TELECONFERENCE MEETING
May 16, 2008
Boardroom 106, 2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 10:15 a.m. LFSRB members present were Bob Selk, Andy Johnson, Lee Engelbrecht, Bob Topel, Fran Byerly, and Jerry Gaska. A quorum was present. DATCP staff present were Cheryl Daniels, Lori Price, and Sue Porter.

Call to order

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Selk moved to approve the agenda. Topel seconded the motion. The motion passed.

Holte presented the April 18 and May 12, 2008, meeting minutes for approval. Gaska made a motion to approve both sets of minutes as written, and Engelbrecht seconded the motion. The motion passed.

Ronald S. Stadler v. Crawford County, Docket NO. 08-L-01: Motion for reconsideration including applicability of Wisconsin Statute 227.49 and procedure for rehearing cases, possible LFSRB re-deliberation on case, and LFSRB decision

Daniels reported that Roth's attorney filed a late submission in this case. Both Stadler, in an e-mail, and Midwest Environmental Advocates, in a letter, objected to these filings. Although Daniels noted that the Board was clear on its policy for regular late submissions and she did not forward the submission to the Board, she wanted to bring this to the Board's attention. Selk stated that he thought the Board was clear on these late submissions but, to make it absolutely clear, made a motion for the LFSRB to decline receiving the late submissions into the record. Johnson seconded the motion. The motion passed.

The LFSRB then discussed the motion for reconsideration. Board members discussed accepting position statements after a decision is made, caution on micro-managing the board's bylaws, the board as a quasi-judicial body that makes decisions based on the record reviewed at the local level, reconsidering a case without changing the decision, whether the motion for reconsideration should be brought by a LFSRB member versus a party in the case, accepting technical assistance on a question of fact in the record versus accepting oral arguments, and the board's authority being broader than Wisconsin Statute 227.49. Selk made a motion that the LFSRB finds that it does have the authority to reconsider the initial decision in this case before it is finalized. Johnson seconded the motion. The motion passed. Board members then discussed being uncomfortable with their earlier decision, wanting to insure the record is internally consistent before making a final decision, and whether they should reconsider this case. Topel made a motion to reconsider this case. Byerly seconded the motion. The motion passed.

In their re-deliberation of this case, the board discussed whether to make a record completeness determination, animal unit calculations in the application versus the nutrient management plan, volume of manure as number to consider, and whether there was enough land base to spread manure. The board decided that after the lunch break, they would have DATCP staff provide technical assistance on the reasons for the differences in the number of animal units in the application versus the newest version of the nutrient management plan in SNAP-Plus.

DRAFT

After lunch, Porter displayed the most recent version of the Roth nutrient management plan in SNAP-Plus and explained the animal unit calculations for different swine categories, the yearly amount of manure the farmer is planning for through 2012, the reason for the difference between the original estimated amount of manure and the actual amount, and how the phosphorus information would indicate that no spreading could take place in certain fields and other "red flags" to look for in the application of manure. After this presentation, the board members discussed whether the application should be modified to include information the local government discussed in other formats but did not include on the application. Daniels reviewed part of the local decision that indicates a condition where an updated nutrient management plan must be submitted on a yearly basis for approval by the Crawford County Land Conservation Committee. The board members further discussed the number of acres for land spreading and maximum gallons of manure allowable under the permit. Daniels reviewed the points made by the board in the original draft decision, and the board reviewed the original challenge of the nutrient management plan not meeting the NRCS 590 standards. Topel made a motion that the challenge in Stadler v. Crawford County is not valid because the application as modified by the submissions made to Crawford County meets Section ATCP 51.34 of Wisconsin Administrative Code for approval. Johnson seconded the motion. The motion passed with one LFSRB member, Lee Engelbrecht, voting "nay" on the motion.

Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01: update on circuit court appeals

Daniels reported that the parties met with Rock County Circuit Court Judge Welker on May 9th, and the judge set dates to file briefs. The petitioners have 60 days to file briefs, the board (respondent) has 60 days after that date to file a brief, and then there will be a reply brief period of 21 days for the petitioners. The LFSRB should expect to meet with their litigation attorney mostly likely at the August 15th meeting. This meeting will be held in closed session.

Board schedule and future agenda items: next meeting scheduled for June 20, 2008, and future agenda items

Daniels reported that she will write up the draft decision made at today's meeting, send it to the LFSRB members for review, and set a date they can meet by teleconference to review and finalize the decision. This meeting will take place before the regularly scheduled meeting on June 20th.

Adjourn

Engelbrecht moved to adjourn the meeting, and Byerly seconded the motion. The motion passed. The meeting ended at 1:35 p.m.

Respectfully submitted,

Bob Selk, Secretary

Date

Recorder: LP

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD
2811 Agriculture Drive, P.O. Box 8911
Madison, Wisconsin 53708-8911

IN THE MATTER OF RONALD S. STADLER, Aggrieved Person v. CRAWFORD COUNTY, Political Subdivision	DOCKET NO. 08-L-01 DECISION
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BEFORE the Wisconsin Livestock Facility Siting Review Board:

James Holte, Chair
Andrew Johnson, Vice Chair
Robert Selk, Secretary
Fran Byerly
Lee Engelbrecht
Jerome Gaska
Bob Topel

NATURE OF THE CASE

Aggrieved Person Ronald S. Stadler ("Stadler") filed a challenge against the political subdivision Crawford County ("County") with the Wisconsin Livestock Facility Siting Board ("Board") received on February 5, 2008. In the challenge, Stadler alleged that the County had approved a livestock facility siting permit for Applicant Roth Feeder Pigs Inc., ("Roth") although the applicant's plan for nutrient management and control of odors, under s. 93.90(3), Stats., was inadequate under the standards of chapter ATCP 51, Wis. Adm. Code. Stadler filed the appeal as an "aggrieved person" under s. 93.90(5)(a), Stats., as a person who owns land within 2 miles of a livestock facility that is proposed to be expanded. In addition, Midwest Environmental Advocates ("MEA") also

filed a Notice of Appearance and a challenge on February 5, 2008 on behalf of 28 additional aggrieved persons who had standing to appear before the board in this matter as owners of property located within two miles of the proposed facility.

On February 5, 2008, under the authority of the Board and its bylaws, Board Attorney Cheryl Furstace Daniels sent a Notice of Request for Review and a Request for Certified Copy of Decision-Making Record to the County, Stadler, MEA and Roth. The Request for Review included a date of March 14, 2008 for all Statements of Position to be postmarked to the Board.

During a time prior to March 14, 2008, the County sent a copy of the decision-making record for the Roth case, although there was no certification of completeness attached to the record. The Board's attorney prepared a listing of the record before the Board utilized in its April 18, 2008 deliberations.

No additional position statements were filed except for the 2 original statements in the challenges by Stadler and MEA. The Board gave notice that it requested consultation with the staff in the Department of Agriculture, Trade and Consumer Protection's ("Department") Division of Agricultural Resource Management ("DARM") as to the use of the Snap-Plus nutrient management software program in the preparation of the plan submitted by Roth. On April 14, 2008, MEA filed an objection to using the specific data in the Roth plan for the Board's consultation.

The Board held a properly noticed meeting on April 18, 2008. Included in the meeting agenda was *Ronald S. Stadler v. Crawford County, Docket No. 08-L-01*. At the beginning of the meeting, the Board took up the objection by MEA of using the Roth

example to demonstrate the use of Snap-Plus by a permit applicant in developing a nutrient management plan. The Board requested that DARM staff demonstrate how Snap-Plus worked without reference to the matter before them. Following the demonstration, the Board took up the matter in this case.

The Board voted to uphold the challenge on April 18, 2008. They directed Board Attorney Cheryl Furstace Daniels to prepare a draft written decision for their consideration at the next Board meeting on June 20, 2008.

Roth filed a Motion for Reconsideration of the April 18th decision on April 18, 2008. He stated that he believed the Board made an error of fact in making its decision. On behalf of the Board, Attorney Daniels accepted the Motion, sending it to Stadler, MEA and the County, setting a date of May 9, 2008 for the filing of any position statements.

On May 8, 2008, the Wisconsin Farm Bureau Federation Cooperative, the Wisconsin Pork Association Cooperative and the Wisconsin Cattlemen's Association filed a request for leave to present an amicus brief to the Board on the issue of the motion for reconsideration. In addition, on May 8, 2008, the Dairy Business Association, Inc. also filed a request for leave to present an amicus brief to the Board on that issue as well. On May 9, 2008, MEA filed a motion in opposition to the requests.

The Board held a properly noticed meeting via teleconference on May 12, 2008. All members were present except for Robert Selk. At that meeting, the Board voted not to grant leave for the filing of amicus briefs in the matter.

On May 13, 2008, Roth's attorney filed an additional position statement to the Board. Stadler objected to the Board being presented with this statement, in an e-mail

submission on May 13, 2008. MEA filed an objection to the Board receiving the statement on May 15, 2008.

On May 16, 2008, the Board met to consider the Motion for Reconsideration filed by Roth. First, the Board voted unanimously to decline receiving the May 13, 2008 submission by Roth's attorney as untimely.

Second, the Board took up the matter of whether it had the authority to reconsider the matter. The Board voted unanimously that it did have the authority to reconsider, on its own motion, a matter that was before it, between a vote on the challenge and the issuance of a final written decision.

Third, the Board considered whether it should reconsider the decision in *Stadler v. Crawford County*, Docket No. 08-L-01. The Board voted unanimously to reconsider its decision.

That brought the original challenge back to the Board. The Board made its decision in the matter on a 6-1 vote. It directed Board Attorney Daniels to draft a written decision for review, editing and signing by the Board. Attorney Daniels did so and sent the draft to the Board, Stadler, MEA on behalf of its clients, Roth, and Crawford County. The draft was posted on the Board's website and notice was given to interested persons that it was available to be seen.

The Board met by teleconference on June ____, 2008 to consider the draft decision in *Stadler v. Crawford County*, Docket No. 08-L-01. After review and edits, the Board decided to sign off on the decision.

Therefore, based upon the record in the matter, including the record submitted by the County, the statements of position by Stadler and MEA, the Motion for Reconsideration by Roth and the statements in opposition by Stadler and MEA, the Board issues the following decision.

ISSUES FOR DECISION

1. Does the Roth application, in regards to odor management, comply with the standards set under s. ATCP 51.30, Wis. Adm. Code?
2. Does the Roth application, in regards to nutrient management, comply with the standards set under s. ATCP 51.30, Wis. Adm. Code?

RELEVANT STATUTES AND RULES

S. 93.90 Livestock facility siting and expansion.

(2) DEPARTMENT DUTIES. (a) For the purposes of this section, the department shall promulgate rules specifying standards for siting and expanding livestock facilities. . .

(3) POLITICAL SUBDIVISION AUTHORITY.

(ae) A political subdivision that requires a special exception or conditional use permit for the siting or expansion of any of the following livestock facilities shall require compliance with the applicable state standards under sub. (2)(a) as a condition of issuing the special exception or conditional use permit:

1. A new or expanded livestock facility that will have 500 or more animal units.

(5) REVIEW OF SITING DECISIONS. (a) In this subsection "aggrieved person" means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

(b) An aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under sub. (2)(a) that are applicable to the livestock facility siting or expansion or violated sub. (3), by requesting the board to review the decision. . .

(bm) Upon receiving a request under par.(b), the board shall notify the political subdivision of the request. The political subdivision shall provide a certified copy of the

record under sub. (4) to the board within 30 days after the day on which it receives the notice.

(c) Upon receiving the certified copy of the record under par. (bm), the board shall determine whether the challenge is valid. The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record under sub. (4)(b). . . The board shall make its decision within 60 days after the day on which it receives the certified copy of the record under par. (bm), except that the board may extend this time limit for good cause specified in writing by the board.

(d) If the board determines that a challenge is valid, the board shall reverse the decision of the political subdivision. The decision of the board is binding on the political subdivision, subject to par. (e). If a political subdivision fails to comply with a decision of the board that has not been appealed under par. (e), an aggrieved person may bring an action to enforce the decision.

Chapter ATP 51 LIVESTOCK FACILITY SITING

ATCP 51.14 Odor and air emissions. (1) ODOR STANDARD. Except as provided in subs. (2) to (4), a livestock facility shall have an odor score of at least 500. The operator shall calculate the odor score according to *Appendix A, worksheet 2*, or by using the equivalent spreadsheet provided on the department's website. An application for local approval shall include *worksheet 2* or the spreadsheet output.

ATCP 51.16 Nutrient management. (1) NUTRIENT MANAGEMENT STANDARD. (a) Except as provided in par. (c):

1. Land applications of waste from a livestock facility approved under this chapter shall comply with NRCS nutrient management technical standard 590 (September, 2005), except for sections V.A.2.b.(2), V.D., V.E. and VI.

(2) PRESUMPTION. For purposes of local approval, an operator is presumed to comply with sub. (1) if the application for local approval complies with s. ATP 51.30.

ATCP 51.30 Application. (1) GENERAL. If local approval is required for a new or expanded livestock facility, a person seeking local approval shall complete and file with the political subdivision the application form shown in *Appendix A*. The application shall include all of the information required by *Appendix A* and attached *worksheets*, including any authorized modifications made by the political subdivision under sub. (2). The information contained in the application shall be credible and internally consistent.

(5) COMPLETE APPLICATION. Within 45 days after a political subdivision receives an application under sub. (1), the political subdivision shall notify the applicant whether the application contains everything required under subs. (1) to (4). If the

application is not complete, the notice shall specifically describe what else is needed. Within 14 days after the applicant has provided everything required under subs. (1) to (4), the political subdivision shall notify the applicant that the application is complete. A notice of completeness does not constitute an approval of the proposed livestock facility.

ATCP 51.34 Granting or denying an application. (1) GRANTING AN APPLICATION. Except as provided in sub. (2), a political subdivision shall grant an application under s. ATCP 51.30(1) if all of the following apply:

- (a) The application complies with s. ATCP 51.30.
- (b) The application contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards in subch. II. To the extent that a standard under subch. II vests discretion in a political subdivision, the political subdivision may exercise that discretion.

(3) WRITTEN DECISION. (a) A political subdivision shall issue its decision under sub. (1) or (2) in writing. The decision shall be based on written findings of fact included in the decision. The findings of fact shall be supported by evidence in the record under s. ATCP 51.36. Findings may be based on presumptions created by this chapter.

(4) TERMS OF APPROVAL. An approval under sub. (1) is conditioned on the operator's compliance with subch. II and representations made in the application for approval. This chapter does not limit a political subdivision's authority to do any of the following:

- (a) Monitor compliance.
- (b) Withdraw an approval, or seek other redress provided by law, if any of the following apply:
 - 1. The operator materially misrepresented relevant information in the application for local approval.
 - 2. The operator, without authorization from the political subdivision, fails to honor relevant commitments made in the application for local approval. A political subdivision may not withhold authorization, under this subdivision, for reasonable changes that maintain compliance with the standards in subch. II.
 - 3. The livestock facility fails to comply with applicable standards in subch. II.

FINDINGS OF FACT

1. On August 20, 2007, Roth Feeder Pigs, Inc., filed an application for local approval with Crawford County for an expansion of its livestock facility to a 1703 animal unit feeder pig operation.
2. On October 5, 2007, the Crawford County Land Conservation Committee (CCLCC) ruled that Roth's application was complete under s. 93.90(4)(a), Stats.

3. On October 18, 2007, the County sent notification to adjacent landowners of the Roth application.
4. On November 21, 2007, Roth provided revised Snap-Plus data on additional information requested about additional livestock depositing manure on the spreadable land in Roth's nutrient management plan.
5. On November 26, 2008, Crawford County held a public hearing where it accepted testimony from 39 persons.
6. The CCLCC accepted written public comment during the 90 day period between August 5, 2007 and January 3, 2008.
7. On December 7, 2007, the CCLCC voted to hire a Nutrient Planner certified in Wisconsin to review the Nutrient Management Plan submitted by Roth Feeder Pig, Inc. The committee hired Randy Busch, a certified planner working for Rock River Labs in Watertown, Wisconsin.
8. On January 3, 2008, Randy Busch appeared at the CCLCC meeting with his completed review. The committee questioned him about his summary and questions he raised in that summary. Ed Ruff, the consultant hired by Roth Feeder Pig, Inc., was present and addressed all the questions raised in Mr. Busch's review.
9. On January 3, 2008, the CCLCC voted to approve Roth Feeder Pig Inc. to operate a livestock facility under the terms of the Crawford County Livestock Facility Licensing Ordinance.
10. On January 23, 2008, the CCLCC sent a written approval for a livestock siting expansion permit to Roth Feeder Pig, Inc. with Findings of Fact and Conclusions. The Order was conditioned on the following: a) the applicant's compliance with the submitted application and worksheets and applicable standards of ATCP 51 of the Wisconsin Administrative Code. (b) An annual submittal of an updated nutrient management plan for review and approval by the Crawford County Land Conservation Department by January 31 of the upcoming crop year. (c) Certification of construction compliance by a Wisconsin Certified Professional Engineer.
11. On February 5, 2008, the Board received a challenge to the issuing of the license granted to Roth Feeder Pig, Inc., by Crawford County from Ronald S. Stadler, an owner of land within 2 miles of the proposed facility, as a violation under s. 93.90(5)(b), Stats., and s. ATCP 51.14 and 51.16, Wis. Adm. Code.
12. On February 5, 2008, the Board received another challenge to the issuing of the license granted to Roth Feeder Pig, Inc., by Midwest Environmental Advocates, on behalf of 28 neighbors who live within 2 miles of the proposed facility, as a violation under s. 93.90(5)(b), Stats., and s. 51.16, Wis. Adm. Code.

13. On February 5, 2008, Board Attorney Cheryl Furstace Daniels sent a Notice of Request for Review and a Request for Certified Copy of Decision-Making Record to the County, with copies to Stadler and MEA, stating that the Board would take up Stadler's challenge within 60 days of receiving the certified record from the County.

14. On April 18, 2008, the Board met to decide the challenge by Stadler, that the granting of the livestock facility siting permit to Roth by the County violated applicable state statutes and administrative rules. The Board voted to uphold the challenge as it believed the information in the nutrient management plan as part of the application was not complete, credible and internally consistent under s. ATCP 51.30(1), Wis. Adm. Code, because the plan did not reflect nutrient management for the 1703 animal units which was the maximum number of animal units for which the applicant applied for the livestock siting permit..

15. On April 18, 2008, Roth submitted a Motion for Reconsideration to the Board, stating that it believed the Board had made an error of fact in its decision of April 18, 2008.

16. On May 16, 2008, the Board voted to reconsider its decision in *Stadler v. Crawford County*, Docket No. 08-L-01.

17. With technical assistance from DARM Nutrient Management Specialist Sue Porter, the Board went through the amended Snap-Plus documentation submitted by Roth during meetings with the CCLCC.

18. With the additional documentation to the original application, the Board voted 6-1 that the challenge to the granting of the livestock siting permit to Roth by Crawford County was not valid.

CONCLUSIONS OF LAW

1. The standards to be applied in this matter are those under s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code.

2. As to meeting the odor standard, Roth's worksheet 2 indicated that it would comply with the standards under s. 93.90, Stats., and ch. ATCP 51, Wis. Adm. Code. Therefore, the application is complete, credible and internally consistent and the applicant has satisfied that standard to receive the license.

3. As to meeting the nutrient management standards, the information in the nutrient management plan as part of the application as modified by additional submissions to Crawford County, was complete, credible and internally consistent under s. ATCP 51.30(1), Wis. Adm. Code. The plan did reflect nutrient management for the maximum number of animals for which the applicant applied for the livestock siting permit, although the calculations for animal units in the worksheets differed from that of the Snap-Plus

program, reflecting the different way which each utilized the animal numbers in reaching its animal unit calculations.

4. The amount of land available to spread the manure calculated to be generated by the maximum number of animals in each year, as stated in the additional submissions by Roth, meets the standards for nutrient management in ch. ATCP 51, Wis. Adm. Code.

5. The challenge of a livestock siting permit to Roth Feeder Pig Inc. for a 1,703 animal unit facility by Crawford County on January 23, 2008 is not valid.

OPINION OF THE BOARD

The Board had some difficulty with this case, in working through the record. There were discussions between Roth and the CCLCC during open meetings that, the Board believes, were utilized to answer questions and ensure that the application was complete, credible and internally consistent. In addition, Roth provided a great deal of additional information, including updated Snap-Plus nutrient management calculations, additional acreage calculations and including "other animals" as part of the nutrient management plan, that were not part of the original application. These additional submissions, plus the Board having technical assistance to understand the differences in "Animal Unit" calculations realized in the application worksheets versus the Snap-plus program outcomes, assisted the Board in making its final determination.

However, for future applicants and local political subdivisions who may find these permitting decisions challenged before the Board, this decision should be instructional. As applications are amended throughout the local process, these amendments should take a written form to clearly show how the final decision was made. Discussions that have a bearing on how a plan will be operating should be reduced to writing. Calculations which, on their face, appear inconsistent should be explained in notes to the plan.

In addition, the local political subdivision is required to certify the record to the Board. It should also have an index and put the record in chronological order with the amendments to the plan as part of that record to assist the Board in making its determination.

By statute, the Board is under a very tight timeframe to make its decisions. In addition, the statute is clear that, although the Board will be making its decision without regard to the local political subdivision's decision, it will do so using the written record from that political subdivision. No additional testimony is granted. The record coming to the Board needs to be carefully ordered so the Board may handle its responsibilities under these constraints.

ORDER

NOW, THEREFORE, IT IS ORDERED, pursuant to s. 93.90(5)(d), Stats.

The granting of the livestock siting expansion permit to Roth Feeder Pig, Inc. for a 1,703 animal unit facility by Crawford County on January 23, 2008 is upheld.

Dated this _____ day of _____, 2008.

STATE OF WISCONSIN
LIVESTOCK FACILITY SITING REVIEW BOARD

James Holte, Chair

Andrew Johnson, Vice Chair

Robert Selk, Secretary

Fran Byerly

Lee Engelbrecht

Jerome Gaska

Robert Topel
